



# Louisiana Sales Tax Changes: Beware the Effective Dates

POSTED ON MAR. 21, 2016

By  
 ERIC YAUCH

The Louisiana sales and use tax bills enacted during the recent special session could create compliance headaches if businesses are unaware of the changes to sales tax exclusions or the effective dates of the bills, practitioners from Jones Walker LLP said in a webinar March 16.

Andre Burvant said that HB 61 , which scales back the exclusions and exemptions to the existing 4 percent sales tax, was 89 pages long when filed and at one point was up to 155 pages long, before it was finalized at 12 pages. Instead of listing all the sales tax provisions and eliminating or modifying exclusions and exemptions, the bill's final version listed only the specific exemptions that still apply. (Prior coverage )

Burvant said businesses and practitioners should read each of the applicable tax statutes to determine the effective date and which specific exemptions apply under the bill. He said his interpretation of HB 61 is that if there is any type of definitional exclusion or exemption, it could potentially be subject to the original 4 percent sales tax beginning April 1, unless that exclusion or exemption is on the specific list of protected exemptions and exclusions.

Goods for resale or for further processing, materials and supplies for ships, and purchases made by state and local governments are some of the items still exempt under HB 61, Burvant said. But exemptions for casual and isolated sales, installation charges, purchases for first use outside the state, and business utilities purchases were left out of HB 61.

Burvant said that it's important to review the new provisions that are applicable to other existing sales tax provisions because there could be differences. For example, he said, the provisions concerning section 302 would begin April 1 and last for 27 months. Other sales tax provisions have a duration of three months.


However, HB 62 , which imposes an additional 1 percent sales and use tax beginning April 1, has its own set of exclusions.


Jay Adams of Jones Walker said HB 62 has been referred to as the "clean penny" sales tax because of its broad applicability, but the bill actually has 65 listed exclusions, while HB 61 has only 32.

Adams said it's important to note the distinctions between the exclusions listed in HB 61 and those in HB 62. For example, he said, HB 62 exempts from the 1 percent sales tax installation charges, occasional sales, and repairs in Louisiana for property that is exported.


Burvant said that generally, if items are not listed under HB 61 or HB 62, they will be taxable at the 5 percent overall rate beginning in April. "They're all in effect until July 1, 2016; then on July 2, the taxes in HB 61 under [sections] 321 and 331 fall off, and so the maximum tax for any items not on those lists would be 3 percent, and then after July 1, 2018, it's going to basically revert back to what we have today," he said.

When you combine the two bills, manufacturing machinery and equipment will be taxed at a 2 percent rate from April 1 to July 1 of this year, but then will be taxable at the 1 percent rate under HB 62 from July 2, 2016 until July 1, 2018, when they will revert to the taxable status they have today, Burvant said.

Matthew Mantle of the firm also noted that HB 30  was enacted during the special session. The law (Act 22) establishes click-through nexus for remote dealers, requires sales and use tax to be collected and remitted if a company has more than \$50,000 of sales into the state, and has an affiliate nexus provision with a federal constitutional backstop, Mantle said.



Kathryn Friel of Jones Walker said HB 19 , another bill that was passed and enacted in the special session, is important because it extends the franchise tax to entities not previously subject to the tax under Louisiana law, like limited liability companies, general partnerships, and joint ventures taxed as C corporations for federal tax purposes.

"This is significant because before, we had never really seen a tie-in between the treatment of an entity for federal tax purposes and Louisiana corporate franchise tax purposes," Friel said. But the franchise does not apply to an LLC that is qualified and eligible to make an S corporation election, she said.

Another important aspect of HB 19, Friel said, is that it overrules the Louisiana First Circuit Court of Appeal's decision in *UTELCOM Inc. v. Dep't of Revenue* , which held that foreign corporations did not have nexus with the state through passive limited partnership interests in entities operating in the state.

"Corporations will now be subject to franchise tax based purely on their ownership of interests in entities that conduct business in Louisiana," Friel said. "So, indirect ownership of partnerships, joint ventures, or other entities that own capital or other property that conduct business in Louisiana will suffice to subject the corporate parent to franchise tax in Louisiana."

Friel said, however, that HB 19 does have a provision that provides a deduction from taxable capital for corporations with subsidiaries that are subject to franchise tax. "So, what this was designed to do is to prevent the tiering problem that would otherwise result from entities down the chain all being subject to franchise tax on the same capital," Friel said.

The Legislature is not close to being done passing revenue-raising measures. Based on recent revenue projections, the state is still short \$70 million for fiscal 2016 and \$750 million for the next fiscal year. Tax and revenue bills can't be considered in the 2016 regular session, so the focus will be on spending cuts, F. Charles McMains Jr. of Jones Walker said. (Prior coverage  and )

## DOCUMENT ATTRIBUTES

JURISDICTIONS	LOUISIANA
SUBJECT AREAS	SALES AND USE TAXATION   NEXUS   ONLINE SALES TAXATION LEGISLATION AND LAWMAKING
INDUSTRY GROUPS	MANUFACTURING
AUTHORS	ERIC YAUCH
INSTITUTIONAL AUTHORS	TAX ANALYSTS
TAX ANALYSTS DOCUMENT NUMBER	DOC 2016-5880
TAX ANALYSTS ELECTRONIC CITATION	2016 STT 54-3